

1 GOING TO BE HELD.

2 MR. GORDON: IF WE'RE MOVING OUTSIDE THE CONTEXT OF THE
3 TEMPORARY RESTRAINING ORDER IN A CONTEMPT PROCEEDING --

4 THE COURT: -- MOVING BACKWARDS TO WHAT THEY DID JUST
5 BEFORE THE PHONE CONFERENCE WAS HELD, THAT THEREFORE AFFECTED
6 THE ABILITY OF THE COURT TO ACT ON WHAT NOVATEL WAS SEEKING.

7 MR. GORDON: I THINK --

8 THE COURT: IN OTHER WORDS, A PARTY MAKES A MOTION FOR
9 A TEMPORARY RESTRAINING ORDER BECAUSE THE COMPANY HAS ONLY ONE
10 ASSET, AND THEY HAVE REASON TO BELIEVE THAT THAT ASSET IS GOING
11 TO BE REMOVED FROM THE COUNTRY, TO TAKE AN EXTREME EXAMPLE, AND
12 THE COMPANY WILL HAVE NO ABILITY TO SATISFY ITS OBLIGATIONS, AND
13 THE COMPANY KNOWS THAT THEY'RE COMING IN AND MAKING THAT MOTION,
14 AND TWO HOURS BEFORE, THEY REMOVE IT FROM -- FROM THE COUNTRY,
15 CAN THE COURT TAKE ANY ACTION?

16 MR. GORDON: WELL, I WOULD MAKE TWO POINTS, YOUR HONOR.
17 THE FIRST IS THAT IF NOVATEL REALLY BELIEVED THAT THAT WAS THE
18 CASE, THEY COULD HAVE COME TO YOUR HONOR WITHOUT GIVING NOTICE,
19 AND THEY CHOSE NOT TO DO THAT.

20 THE SECOND POINT I WOULD MAKE IS, YES, I THINK THERE
21 ARE CIRCUMSTANCES UNDER WHICH YOUR HONOR CAN RESTORE THE STATUS
22 QUO ANTE, BUT IT CAN'T BE BY WAY OF A TEMPORARY RESTRAINING
23 ORDER; IT WOULD HAVE TO BE BY WAY OF A SUBSEQUENT ORDER.

24 THE COURT: BY WHAT I COULD DO RIGHT NOW.

25 MR. GORDON: IF YOUR HONOR --

1 THE COURT: AND THAT IS, THAT -- ORDER THAT THE SHARES
2 BE RESTORED.

3 MR. EARLY: YOUR HONOR --

4 MR. GORDON: YOUR HONOR, AGAIN, WE'VE GOT SOME NOTICE
5 ISSUES HERE. IF WHAT WE'RE TALKING ABOUT NOW IS -- WE'RE NOT
6 HERE ON A CONTEMPT PROCEEDING ON THIS TRO THAT WAS ISSUED TWO
7 AND A HALF MONTHS AGO, BUT RATHER, WE'RE HERE TO -- TO DECIDE .
8 WHETHER SOME NEW ORDER SHOULD BE ISSUED.

9 LET'S DO IT RIGHT, YOUR HONOR. THERE'S A VERY
10 IMPORTANT REASON WHY WE SHOULD DO IT -- FOLLOW PROCEDURE HERE.
11 AND THAT IS, THIS COURT DOESN'T HAVE JURISDICTION, AND I POINTED
12 THAT OUT IN MY PAPERS THREE MONTHS AGO, AND THERE'S STILL NOT
13 BEEN ANY REPLY FROM NOVATEL ON THIS. THE ONLY REASON THIS CASE
14 IS IN FEDERAL COURT IS BASED ON DIVERSITY JURISDICTION, AND YET
15 TEMPLETON AND PITCARIN, WHICH ARE THE TWO CORPORATIONS
16 CONTROLLED BY MR. BREEN AND MR. EASTON, THROUGH WHICH THESE
17 SHARES WERE OWNED, ARE DELAWARE CORPORATIONS, AS IS NOVATEL, AND
18 ICT, THE COMPANY THAT IS ON EVERYONE'S LIPS EVERY TIME WE WALK
19 INTO THIS COURTROOM, IS ALSO A DELAWARE CORPORATION.

20 ALL THREE OF THOSE CORPORATIONS, PITCARIN, TEMPLETON
21 AND ICT, ARE INDISPENSIBLE PARTIES TO THIS ACTION. AND WE
22 POINTED THAT OUT IN OUR PAPERS THREE MONTHS AGO, AND THERE'S
23 STILL BEEN NO RESPONSE TO THAT. AND WE ALSO GAVE YOUR HONOR THE
24 AUTHORITY THREE MONTHS AGO THAT IN AN INJUNCTIVE PROCEEDING LIKE
25 THIS, IT IS THE BURDEN OF THE MOVING PARTY TO SATISFY YOUR HONOR

1 THAT IT PROBABLY WILL SUCCEED ON THE JURISDICTIONAL ISSUES, AND
2 THAT IF IT FAILS TO MEET THAT BURDEN, WE'VE GIVEN YOU THE NINTH
3 CIRCUIT AUTHORITY ON THIS, IF YOUR HONOR DETERMINES THAT THERE
4 ARE INDISPENSIBLE PARTIES THAT WOULD DESTROY DIVERSITY, YOUR
5 HONOR MUST DISMISS THE ACTION.

6 NOW, IN THE SUPPLEMENTAL DECLARATION THAT MR. EARLY
7 PROVIDED TO THE COURT DAY BEFORE YESTERDAY, I NOTICED IN
8 REREADING IT HE'S ATTACHED A LETTER THAT HE FIRED OFF TO SOMEONE
9 MENTIONING THAT HE WAS -- HE WAS GOING TO AMEND THE COMPLAINT TO
10 BRING IN ADDITIONAL PARTIES; HE WAS GOING TO AMEND THE COMPLAINT
11 TO BRING IN MR. PARKS. HE'S NEVER DONE IT, YOUR HONOR. AND
12 THERE'S A GOOD REASON WHY HE HASN'T DONE IT: BECAUSE IT WILL
13 HIGHLIGHT A JURISDICTIONAL PROBLEM THAT HE CANNOT SOLVE. AND
14 THAT'S WHY WE'VE HEARD NOTHING FROM HIM ON THIS ISSUE. WE HAVE
15 THREE INDISPENSIBLE PARTIES, ANY ONE OF WHOM WOULD DESTROY
16 DIVERSITY JURISDICTION. THIS CASE SHOULD NOT PROCEED IN THIS
17 COURT.

18 MR. EARLY: YOUR HONOR, THE LETTER DOESN'T SAY ANYTHING
19 ABOUT BRINGING IN TEMPLETON, PITCARIN OR MR. PARKS. BUT IN ANY
20 EVENT, THEY AREN'T PARTIES TO THIS ACTION. THIS PARTICULAR
21 PROCEEDING IS OBVIOUSLY SOMEWHAT ANCILLARY TO THE WHOLE -- WHOLE
22 PURPOSE OF THE ACTION, THAT IS, TO COLLECT ON THE NOTE. BUT
23 NEVERTHELESS, THERE IS JURISDICTION AMONG THE PARTIES. THERE'S
24 BEEN NO MOTION TO DISMISS FOR FAILURE TO JOIN INDISPENSIBLE
25 PARTIES. I DON'T THINK THAT THAT MOTION WOULD SUCCEED, IF SUCH

1 A MOTION WERE BROUGHT, BECAUSE WE HAVE ALREADY IN PLACE IN ANY
2 EVENT A TRO. THE TEMPORARY RESTRAINING ORDER DOES TWO THINGS:
3 IT SAYS, YOU BREEN AND EASTON AND YOUR AGENTS AND OFFICERS, OR
4 WHATEVER, WILL -- OR ATTORNEYS, WILL NOT CAUSE STOCK TO BE
5 ISSUED. AND IT SAYS: YOU BREEN AND EASTON AND YOUR ATTORNEYS,
6 AND OTHER PEOPLE ACTING ON YOUR BEHALF, WILL TURN OVER TO
7 NOVATEL ANY STOCK IN YOUR POSSESSION. THAT -- THAT ORDER IS
8 ALREADY IN EFFECT. MR. PARKS HAS NOT OBEYED THAT ORDER, MR.
9 BREEN AND MR. EASTON HAVE NOT OBEYED THAT ORDER.

10 WHAT MR. GORDON SEEMS TO BE SAYING TODAY IS: YOUR
11 HONOR, IT'S OKAY FOR MY CLIENT TO VIOLATE A TRO, AN ORDER
12 ENTERED BY THIS COURT, BECAUSE WE THINK THAT THERE'S PROBABLY NO
13 JURISDICTION, SO WE CAN GET AWAY WITH THAT. AND I DON'T THINK
14 THAT THAT IS THE RULE. IN FACT, WE HAVE CITED SOME AUTHORITY
15 WHICH SAYS, EVEN IF THE COURT IS WRONG IN ENTERING THE TRO, EVEN
16 IF THE COURT HAS NO JURISDICTION, THAT DOES NOT -- IS NOT A
17 DEFENSE TO AN APPLICATION FOR OR SANCTIONS FOR VIOLATION OF A --
18 OF AN ORDER -- OF A TEMPORARY RESTRAINING ORDER ISSUED BY THE
19 COURT.

20 SO I THINK THAT THE LAW IS CLEAR, AND I THINK THE
21 POLICY BEHIND IT IS CLEAR, THAT YOU CAN'T DISOBEY A COURT ORDER
22 BECAUSE YOU THINK MAYBE I'LL BE ABLE TO PROVE AT SOME LATER
23 POINT THAT THERE IS A JURISDICTIONAL DEFECT, OR THAT THERE IS
24 SOME -- PARTICULARLY IN THIS TYPE OF SITUATION, WHERE IT'S
25 MISJOINDER OF SOME OTHER PARTIES, ALLEGEDLY.

1 THE OTHER POINT THAT I'D LIKE TO BRING OUT IS THAT
2 THERE WERE TWO MISSTATEMENTS MADE AT THE HEARING ON THE TRO
3 ITSELF THAT WERE USED AS ARGUMENTS AGAINST -- RATHER, ONE
4 MISSTATEMENT THAT WAS USED AS AN ARGUMENT AGAINST GRANTING THIS
5 TRO, AND THAT WAS A STATEMENT BY MR. BABBITTS, THE ATTORNEY FOR
6 MR. BREEN AND EASTON. ONE OF HIS PRINCIPAL ARGUMENTS AGAINST
7 ENTERING THE TRO WAS THAT THERE WERE OTHER SHAREHOLDERS OUT
8 THERE WHO HAD BEEN OFFERED THESE 10,000 SHARES OF STOCK. THAT
9 IS THE STOCK ISSUANCE OFFER THAT SUPPOSEDLY HAD BEEN RESCINDED
10 JUST NINE MINUTES BEFORE THE COURT HEARING. MR. -- MR. BABBITTS
11 ON BEHALF OF MR. BREEN AND EASTON USED WHAT SUPPOSEDLY WAS A
12 CANCELED OFFER TO OTHER SHAREHOLDERS FOR THEIR STOCK AS AN
13 ARGUMENT AGAINST ENTERING THIS TRO.

14 SO EITHER MR. BABBITTS WAS MISINFORMED BY HIS CLIENTS,
15 WHO WERE ON THE PHONE DURING THAT CONFERENCE, AND WHO SAID
16 NOTHING, OR THE ACTUAL RESCISSION OF THAT 10,000 SHARES, AND THE
17 TRANSFER OF THE 200 SHARES TO MR. PARKS, DIDN'T EVEN INCUR AT
18 THAT POINT, OR HAD NOT OCCURRED.

19 AND I SUSPECT THAT, GIVEN THE INFORMATION IN THE
20 TESTIMONY FROM MR. BREEN AND MR. EASTON, THAT THERE ISN'T ANY
21 WAY BY CLEARLY CONVINCING EVIDENCE I COULD ESTABLISH THAT --
22 THAT -- THAT THE BOARD OF DIRECTORS' MEETING DID NOT CONCLUDE
23 NINE MINUTES BEFORE THE START OF THE TRO HEARING. I DON'T THINK
24 I CAN ESTABLISH THAT BY CLEAR AND CONVINCING EVIDENCE. BUT IF
25 YOU -- IF YOU ASSUME THAT THAT HAPPENED, THAT THOSE ACTIONS TOOK

1 PLACE, THEN WHAT YOU HAVE NINE MINUTES LATER IS COUNSEL FOR
2 BREEN AND EASTON MISREPRESENTING TO THE COURT THAT THERE STILL
3 WAS THIS OFFER OUT TO OTHER SHAREHOLDERS, AND USING THAT AS AN
4 ARGUMENT AS TO WHY THE TRO ITSELF COULDN'T BE ENTERED.

5 MR. GORDON: YOUR HONOR --

6 MR. EARLY: THEN WE HAVE MR. PARKS, WHO, A FEW HOURS
7 BEFORE THE TRO, IN HIS TESTIMONY SAYS HE'S REPRESENTING BREEN .
8 AND EASTON, A FEW MINUTES BEFORE THE TRO SAYS HE'S ACTING AS A
9 CREDITOR FOR ICT, AND AFTER THE TRO IS ENTERED SAYS, "WELL, I
10 DIDN'T SEE THE TRO, AND PLUS, THE COURT DOESN'T HAVE
11 JURISDICTION, SO I CAN DISOBEY IT."

12 WHEN YOU PUT THESE FACTS TOGETHER, IT IS REALLY
13 OUTRAGEOUS CONDUCT, PARTICULARLY --

14 THE COURT: WELL, I AGREE WITH YOU, BUT TECHNICALLY, DO
15 YOU HAVE A CONTEMPT OF COURT IF THE ACTION THAT WAS TAKEN WAS
16 TAKEN BEFORE THE COURT ISSUED THE TEMPORARY RESTRAINING ORDER?

17 MR. EARLY: I THINK --

18 THE COURT: AND WHAT -- OR IS NOW WHAT WE HAVE SOME
19 OTHER KIND OF CONDUCT THAT IS REPREHENSIBLE AND FOR WHICH SOME
20 KIND OF A SANCTION SHOULD BE IMPOSED? WHICH IS IT?

21 MR. EARLY: I THINK -- I THINK WE DO HAVE A VIOLATION
22 OF THE TEMPORARY RESTRAINING ORDER, BECAUSE IT DID REQUIRE -- IT
23 WAS MANDATORY IN THAT IT REQUIRED THE -- THE RETURN OR THE
24 TRANSFER TO NOVATEL FINANCE OF STOCK THAT WAS HELD BY BREEN OR
25 EASTON, OR BY THEIR AGENTS. AND MR. PARKS, AS AN ATTORNEY FOR

1 BREEN AND EASTON, AND CERTAINLY AN AGENT --

2 MR. GORDON: MAY I INTERJECT AT SOME POINT, YOUR HONOR?

3 THE COURT: JUST A MOMENT. I HEARD YOU OUT.

4 MR. GORDON: I'M SORRY.

5 MR. EARLY: CERTAINLY HE HAS AN OBLIGATION, AS DO MR.
6 BREEN AND MR. EASTON, TO OBEY THAT ORDER REQUIRING A TRANSFER OF
7 THOSE SHARES TO NOVATEL FINANCE, EVEN ASSUMING THAT THE TRANSFER
8 WAS EFFECTED PRIOR TO THE -- TO THE HEARING. AND I DON'T THINK
9 THAT IS CLEAR.

10 THE COURT: WHO EFFECTED -- WHO EFFECTED THE TRANSFER?
11 WAS IT BREEN OR EASTON OR WAS IT SOME CORPORATE ENTITY?

12 MR. EARLY: WELL, I THINK, YOUR HONOR, THAT -- THAT
13 THERE'S -- THERE'S A NUMBER OF ASPECTS TO THAT. THE ACTUAL
14 PHYSICAL TRANSFER OF SHARES AND THE SIGNING OF DOCUMENTS
15 CERTAINLY WAS ACCOMPLISHED BY MR. BREEN AND MR. EASTON. AND
16 THERE IS NO DOUBT THAT -- THAT THEY CAN BE AFFECTED BY THE
17 COURT'S ORDER, AND IN FACT, IN THE JULY 1ST HEARING, YOU
18 DIRECTED THEM SPECIFICALLY IN THEIR CAPACITIES AS INDIVIDUALS,
19 DIRECTORS OR ANY -- OFFICERS, OR ANY CAPACITY, NOT TO DO -- NOT
20 TO CAUSE THE ISSUANCE OF STOCK, AND TO -- AND TO TAKE ACTION OR
21 REFRAIN FROM TAKING ANY ACTION THAT WOULD CAUSE THAT TO HAPPEN.

22 AND EVEN ASSUMING THAT ALL OF THESE EVENTS THAT -- THAT
23 THE TYPED-UP BOARD MEETINGS, AND THE TYPED-UP SHARE CERTIFICATE,
24 AND STICKING IT IN AN ENVELOPE, HAD ALL OCCURRED PRIOR TO THE
25 TIME THAT THIS COURT HEARD THIS MATTER, THE SHARES HADN'T EVEN

1 GONE OUT THE DOOR, MR. PARKS HADN'T RECEIVED THEM, YOU KNOW, AND
2 THERE IS AN ORDER AT THAT TIME, AFTER THAT HEARING, SAYING, "IF
3 YOU'VE GOT THOSE THINGS, OR IF YOUR AGENTS HAVE THEM, YOU'RE
4 TO -- YOU'RE TO TURN THEM OVER." AND THAT HAS BEEN IGNORED.
5 MR. PARKS' RESPONSE IS, "WELL, WAIT, I'M NOT ACTING AS THE AGENT
6 FOR MR. BREEN AND MR. EASTON. IT'S TRUE I WAS THEIR ATTORNEY A
7 FEW HOURS BEFORE THE TRO HEARING, AND I CAN REFUSE TO ANSWER
8 QUESTIONS ABOUT WHAT I TALKED TO THEM ABOUT, BECAUSE I WAS THEIR
9 ATTORNEY, BUT NOW I'M THE -- I'M THE CREDITOR, I HAVE NOTHING TO
10 DO WITH THEM, YOU CAN'T GET ME, I'M WEARING A DIFFERENT HAT.
11 THE COURT HAS NO POWER TO TOUCH ME IF I CHANGE HATS." AND THAT
12 CLEARLY IS NOT THE LAW.

13 THE COURT: WELL, BUT THE COURT SURELY HAS JURISDICTION
14 OVER BREEN AND EASTON.

15 MR. EARLY: IT -- IT CERTAINLY DOES, YOUR HONOR.

16 MR. GORDON: THE COURT DOES HAVE JURISDICTION OVER
17 BREEN AND EASTON. IT DOES NOT HAVE JURISDICTION OVER TEMPLETON,
18 PITCARIN OR ICT, NOR WILL IT HAVE JURISDICTION OVER THIS ACTION
19 ONCE YOUR HONOR INQUIRES: ARE THEY IN INDISPENSIBLE PARTIES?
20 AND CLEARLY THEY ARE. YOUR HONOR'S ORDERS ARE ORDERING THEM TO
21 DO THINGS. THE VERY RELIEF THAT --

22 THE COURT: WELL, HAVE YOU MOVED TO DISMISS? I GUESS
23 YOU'RE JUST REPRESENTING MR. PARKS NOW.

24 MR. GORDON: WE'RE NOT EVEN A PARTY YET. AND IF I
25 COULD JUST CORRECT WHAT MR. EARLY SAID ABOUT HIS OWN LETTER,

1 HE'S WRONG. THE LETTER THAT HE ATTACHED TO THE COURT SAID THAT
2 "WE ARE PREPARED TO PROCEED, IF NECESSARY, WITH OUR PRELIMINARY
3 INJUNCTION MOTION AND APPLICATION FOR CONTEMPT SANCTIONS AND OUR
4 MOTION TO AMEND TO INCLUDE MR. PARKS AS A DEFENDANT."

5 MR. EARLY: NOT TEMPLETON AND PITCARIN.

6 MR. GORDON: WELL, HE SAID IT DIDN'T MENTION PARKS, AND
7 HE'S WRONG.

8 MR. EARLY: I'M SORRY. I MISSPOKE, YOUR HONOR.

9 MR. GORDON: AND THE REASON HE HASN'T MADE THAT MOTION,
10 YOUR HONOR, IS IT'S VERY CONVENIENT TO HAVE MR. PARKS SITTING
11 HERE OUT HERE IN LIMBO, WITH NOT SO MUCH AS A CLAIM FOR RELIEF
12 ASSERTED AGAINST HIM. MR. EARLY IS ASKING NOW FOR THE COURT TO
13 JUDGE THIS MATTER, FINALLY, TO ORDER MR. BREEN -- MR. PARKS TO
14 RETURN THESE SHARES, WHICH NECESSARILY ENTAILS A RESCISSION, AND
15 IF WE'RE GOING TO HAVE A RESCISSION HERE, YOUR HONOR, YOU CAN'T
16 HAVE ONLY ONE PARTY TO A RESCISSION ACTION, YOU'VE GOT TO HAVE
17 THE OTHER SIDE OF THE RESCISSION ACTION. AND THE OTHER SIDE OF
18 THIS TRANSACTION IS ICT, WHICH IS A DELAWARE CORPORATION, SO
19 THERE'S NO JURISDICTION.

20 THE COURT: WHO SIGNED -- WHO SIGNED THE -- OR WHO WERE
21 PARTIES TO THE RESOLUTION?

22 MR. EARLY: THE RESOLUTION WAS SIGNED BY MR. BREEN AND
23 MR. EASTON.

24 MR. GORDON: AS DIRECTORS OF ICT.

25 MR. EARLY: RIGHT. THEY WERE SIGNED BY MR. BREEN AND

1 MR. EASTON.

2 THE COURT: WELL, YOU CAN MAKE ALL THE NICE ARGUMENTS
3 YOU WANT TO, AND ALL THE -- THE -- YOU KNOW, THE DOT-THE-I'S,
4 CROSS-THE-T'S ARGUMENTS, THE REALITY IS THAT SOMETHING SLEAZY
5 WENT ON HERE, AND THE SLEAZINESS WAS THAT MR. PARKS AS AN
6 ATTORNEY TOOK TRANSFER OF STOCK WHEN IT WAS VERY CLEAR THAT THAT
7 WOULD HAVE AN IMPACT UPON A PROCEEDING THAT THE COURT WAS JUST
8 ABOUT TO EMBARK UPON. I'M GOING TO ISSUE AN ORDER, AND I WANT
9 YOU TO PREPARE IT --

10 MR. GORDON: YOUR HONOR --

11 THE COURT: -- THAT WILL -- JUST A MINUTE -- THAT WILL
12 ORDER THAT MR. BREEN AND MR. EASTON, BOTH OF WHOM, INDIVIDUALLY
13 AND THROUGH THEIR ATTORNEY IN THAT PHONE CONFERENCE MISLED THE
14 COURT AS TO THE STATE OF AFFAIRS WITH RESPECT TO THAT STOCK,
15 RESCIND THE ACTIONS THAT THEY TOOK TRANSFERRING THAT STOCK. AND
16 THAT IS ESSENTIALLY WHERE WE WILL COME BACK, TO WHERE WE SHOULD
17 BE. AND I DON'T HAVE TO HAVE MR. PARKS HERE, I DON'T HAVE TO
18 HAVE ICT, I'VE GOT BREEN AND EASTON, AND WITHOUT THEM, THAT
19 ACTION BY THE BOARD IS A NULLITY.

20 DO YOU UNDERSTAND?

21 MR. GORDON: YOUR HONOR, LET ME ADDRESS TWO THINGS.

22 THE COURT: THERE'S MORE THAN ONE WAY -- IT'S OVER --
23 THERE'S MORE THAN ONE WAY TO GET SLEAZY, AND WHAT HAPPENED HERE
24 WAS SLEAZY.

25 MR. GORDON: YOUR HONOR, MAY I PLEASE --

1 THE COURT: NO.

2 MR. GORDON: -- ADDRESS THE COURT ON THIS ISSUE?

3 THE COURT: I'VE HEARD YOU AD NAUSEAM.

4 OKAY. WOULD YOU PREPARE THE ORDER.

5 MR. EARLY: YES, YOUR HONOR.

6 THE COURT: AND THEN WHEN YOU CAN WORK OUT THE REST OF
7 THESE DETAILS, LET ME KNOW. OR OTHER PROPOSALS OR WHATEVER.
8 BUT THAT'S HOW WE'RE GOING TO DO IT.

9 MR. EARLY: THANK YOU, YOUR HONOR.

10 MR. GORDON: YOUR HONOR, JUST SO THAT I CAN CONFIRM
11 WHAT THE COURT'S ORDER IS --

12 THE COURT: THE COURT'S ORDER DOESN'T GO TO YOUR CLIENT
13 AT ALL.

14 MR. GORDON: SO --

15 THE COURT: ALTHOUGH HE CERTAINLY WILL BE IMPACTED BY
16 IT. OKAY.

17 MR. GORDON: YOUR HONOR, THEN THE CONTEMPT IS
18 DISCHARGED?

19 THE COURT: CONTEMPT IS DISCHARGED.

20 MR. GORDON: THANK YOU.

21 MR. EARLY: THANK YOU, YOUR HONOR.

22 (PROCEEDINGS ADJOURNED)

23

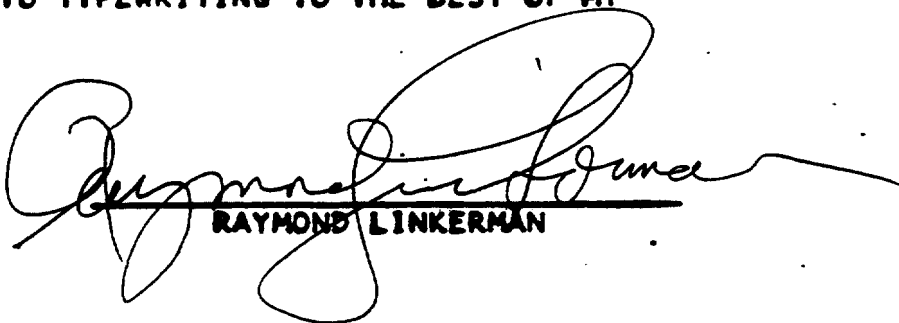
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CERTIFICATE OF REPORTER

I, RAYMOND LINKERMAN, THE UNDERSIGNED OFFICIAL REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1 THROUGH 28 INCLUSIVE, CONSTITUTE A TRUE, FULL AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.


RAYMOND LINKERMAN



2011年10月10日 星期一 10:10:10

ORIGINAL

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FILED
San Francisco County Superior Court

JUN 12 1991

DONALD W. DICKINSON, Clerk
BY 112 J. J. J. J. J. Deputy Clerk

Attorneys for Plaintiff, TODD A. PITTS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

TODD A. PITTS, an Individual,
Plaintiff,

vs.

ROMULUS CORPORATION, a Nevada
Corporation, also known as
ROMULUS ENGINEERING
CORPORATION; ROMULUS
CORPORATION, a Delaware
Corporation; ROMULUS
CORPORATION, a Delaware
Corporation and THE EASTON
CORPORATION, a Delaware
Corporation dba ROMULUS
ENGINEERING, a partnership;
ROMULUS ENGINEERING INC., a
Delaware Corporation; QUENTIN
L. BREEN, an Individual; DANIEL
PARKS, an Individual; DOES 1-
50, Inclusive,
Defendants.

CASE NO.

933210

COMPLAINT FOR

- 1) BREACH OF ORAL CONTRACT;
- 2) BREACH OF WRITTEN CONTRACT;
- 3) BAD FAITH DENIAL OF
CONTRACT EXISTENCE;
- 4) FRAUD;
- 5) INTENTIONAL
MISREPRESENTATION;
- 6) NEGLIGENT
MISREPRESENTATION;
- 7) COMMON COUNTS;
- 8) UNJUST ENRICHMENT;
- 9) BREACH OF THE COVENANT OF
GOOD FAITH AND FAIR
DEALING; AND
- 10) CONSTRUCTIVE TRUST.

Plaintiff, TODD A. PITTS, alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, TODD A. PITTS (hereinafter referred to
as "TODD"), is an individual who is presently a resident of the
State of Virginia.

2. TODD is informed and believes and thereupon alleges that Defendant, ROMULUS CORPORATION, a Delaware Corporation ("RC" hereinafter), was, at the time of the acts herein complained of, a corporation doing business in the City of San Francisco, County of San Francisco, State of California. TODD is further informed and believes and thereupon alleges that RC is or was at the time of the acts herein complained of, the 100% owner of REC and REI.

3. TODD is informed and believes and thereupon alleges that Defendant, ROMULUS CORPORATION was, at the time of the acts herein complained of, a Nevada Corporation, with its principal place of business in the City of San Francisco, County of San Francisco, State of California. TODD is also informed and believes and thereupon alleges that during the time of the acts complained of herein, ROMULUS CORPORATION was also known as Romulus Engineering Corporation. (When utilized herein, all references to Romulus Corporation, a Nevada Corporation aka Romulus Engineering Corporation shall be "REC".) TODD is further informed and believes and thereupon alleges that REC is or was at the time of the occurrences complained of herein, owned 100% by RC.

4. TODD is informed and believes and thereupon alleges that Defendant, THE EASTON CORPORATION, a Delaware Corporation ("TEC" hereinafter), was, at the time of the acts herein complained of, a business entity engaged in business in the City of San Francisco, County of San Francisco, State of California. TODD is informed and believes and thereupon alleges that TEC was owned either in whole, in part or beneficially by

1 Anthony Easton.

2 5. TODD is informed and believes and thereupon
3 alleges that at some time before the time of the acts complained
4 of in this Complaint, RC and TEC formed a partnership entitled
5 Romulus Engineering ("RE" hereinafter) which had its principal
6 place of business in the City of San Francisco, County of San
7 Francisco, State of California.

8 6. TODD is informed and believes and thereupon
9 alleges that Defendant, ~~ROMULUS ENGINEERING~~, INC., a Delaware
10 corporation ("REI" hereinafter), has or had at the time of the
11 acts complained of herein, its principal place of business in the
12 City of San Francisco, County of San Francisco, State of
13 California and that REI is in some manner or form a successor to
14 RE. TODD is further informed and believes and thereupon alleges
15 that REI is owned 100% by RC.

16 7. TODD is informed and believes and thereupon
17 alleges that although REC was formed for the purpose of engaing
18 in the paging opportunity, in reality, no distinction of entites
19 existed between REC and REI and/or RE.

20 8. TODD is informed and believes and thereupon
21 alleges that Defendant, QUENTIN L. BREEN, ("BREEN" hereinafter)
22 at all times herein relevant, was acting in his capacity as a
23 director, officer and majority shareholder of RC, REI, and RE.
24 TODD is further informed and believes and thereupon alleges that
25 at the time of the occurrence of the activities complained of
26 herein, BREEN had his principal place of business in the City of
27 Francisco, County of San Francisco, State of California. TODD is
28 informed and believes and thereupon alleges that BREEN is the

1 owner of RC either in whole, in part or beneficially.

2 9. TODD is informed and believes and thereupon
3 alleges that Defendant, DANIEL PARKS, ("PARKS" hereinafter) was
4 at the time of the occurrence of the acts complained of herein,
5 an individual who was an agent and representative of one or more
6 of the Defendant individuals and/or entities and acted in that
7 representative capacity.

8 10. Prior to moving to Virginia, TODD resided in the
9 County of San Francisco, State of California and was referred to
10 by RE and/or REI as the Chief Operating Officer of RE and/or REI.
11 TODD is informed and believes and thereupon alleges that he was
12 never elected to such a position and never held such a position
13 on the Board of Directors of either entity. During the time that
14 TODD was so employed, his employment was based in the County of
15 San Francisco, State of California.

16 11. The true names and capacities, whether individual,
17 corporate, associate or otherwise, of Defendants Does 1-50,
18 inclusive, are presently unknown to TODD who therefore sues said
19 Defendants by such fictitious names. TODD is informed and
20 believes, and on information and belief alleges, that each of the
21 defendants designated herein as a fictitiously named defendant
22 is, in some way, manner or form responsible for the acts, events
23 and happenings hereinafter alleged and referred to, and that each
24 of the defendants in some way, manner or form, and to some
25 extent, caused detriment, damage and injury to TODD as
26 hereinafter alleged. At such time as TODD ascertains the precise
27 basis for liability and the true names and capacities of any said
28 fictitiously named defendants, TODD will seek leave to amend this

1 Complaint by setting forth the same, along with the appropriate
2 allegations. Wherever appearing in this Complaint, each and
3 every reference to "Defendants" is intended to be an shall be a
4 reference to all defendants in this action and to each of them,
5 including all fictitiously named defendants.

6 12. TODD is informed and believes and thereupon
7 alleges that at all times material hereto, Defendants, and each
8 of them, were and now are, either the agents or principals of
9 each of the other Defendants, and of each other, and in such
10 capacity or capacities participated in the acts and conduct
11 herein and have incurred liability therefore.

12 FACTUAL ALLEGATIONS

13 13. RE and REI are, or were at the time of the acts
14 complained of herein, in the business of soliciting individuals
15 and entities to submit applications to the Federal Communications
16 Commission ("FCC" hereinafter) for various communications
17 licenses as well as filing applications for cellular telephone
18 licenses which had previously been solicited.

19 14. REC is, or was at the time of the acts complained
20 of herein, formed to carry out the same activities as REI and RC
21 allegedly to take advantage of a licensing opportunity through
22 the FCC for a nationwide 900 mhz paging license.

23 15. TODD is informed and believes and thereupon
24 alleges that REC, RC and REI are closely held corporations as
25 that term is generally used. These entities were and still are
26 run as if they were a joint venture or a sole proprietorship of
27 BREEN or other entities controlled directly by BREEN and should
28 be treated at law as such.

1 16. TODD is informed and believes and thereupon
2 alleges that at all times material to this Complaint BREEN was a
3 director, officer or majority or beneficial shareholder of RC,
4 REC and REI.

5 17. In or about August 1, 1988, TODD was hired by RE.
6 In his employment, TODD was hired initially as a project manager
7 to manage the staff involved in cellular filings with the FCC and
8 processing all documentation on those applications. Thereafter,
9 in or about October 1988, TODD was promoted to the position of
10 director of client services and, in addition to his previous
11 responsibilities, TODD dealt directly with the clients of
12 Defendants informing them of the status of their application
13 filings with the FCC. In or about December, 1988, TODD was again
14 promoted to the position of Chief Operating Officer where, in
15 addition to his previous duties, TODD took over responsibility
16 for supervising the entire organization. At all times thereafter
17 up and until TODD terminated his employment with RE by letter of
18 resignation dated June 8, 1989, TODD remained in his position as
19 Chief Operating Officer of RE and/or REI.

20 18. In or about April, 1989, TODD became aware of an
21 FCC licensing opportunity for the granting of a 900 mhz paging
22 license throughout the United States (the "paging opportunity").

23 19. At the time that TODD learned of the paging
24 opportunity BREEN was out of the Country and was not reachable by
25 TODD. Knowing that if Defendants' were to participate in the
26 paging opportunity it required immediate action, TODD took the
27 information he had gathered to PARKS. TODD took this information
28 to PARKS because he had been told by BREEN prior to BREEN going

1 out of the Country, that TODD was to go to PARKS with any matters
2 that needed attention in BREEN's absence.

3 20. Over the succeeding days, TODD and PARKS had
4 several conversations about the paging opportunity including
5 discussions of whether Defendants would be interested in entering
6 into and exploiting the paging opportunity. TODD is informed and
7 believes and thereupon alleges that PARKS transmitted much of the
8 information TODD gave to PARKS to Anthony Easton who in turn had
9 one or more conversations with BREEN while BREEN was in China.
10 At various times in their discussions, PARKS told TODD that
11 Defendants were not interested in pursuing the paging
12 opportunity.

13 21. On or about April 27, 1989, TODD had gathered
14 additional information which made the paging opportunity look
15 more attractive for Defendants' entry into that business.
16 Accordingly, on April 27, 1989, PARKS, TODD and Anthony Easton
17 met to again discuss Defendants' entry into the paging
18 opportunity. At that time, it was decided that because of the
19 profit potential of the paging opportunity, Defendants would
20 enter into the paging opportunity. It was also decided that TODD
21 would be compensated by Defendants wholly separate from his
22 compensation for his other duties with RE and/or REI for bringing
23 the paging opportunity to Defendants' attention and for engaging
24 in various tasks to organize and supervise functions of the
25 paging opportunity. TODD, and PARKS, on behalf of Defendants,
26 agreed that Defendants would compensate TODD at the rate of ten
27 percent (10%) of all money received from non-previously existing
28 clients of Defendants who purchased paging applications from

1 Defendants through the paging opportunity plus one percent (1%)
2 of all money received from all clients who purchased applications
3 from Defendants in the paging opportunity.

4 22. During the course of this April 27, 1989 meeting,
5 PARKS on behalf of Defendants, TODD and Anthony Easton discussed
6 various steps that were necessary to be undertaken in order to
7 meet the FCC filing date of May 17 through 19, 1989. At that
8 time, PARKS, on behalf of Defendants, and TODD outlined those
9 steps to be taken in the days immediately following including,
10 but not limited to:

11 a. hiring FCC counsel to assist in filing the
12 paging applications;

13 b. contacting various newsletter writers in
14 order to market the paging opportunity to clients and potential
15 clients;

16 c. sending out a mailing to all existing clients
17 of Defendants in order to interest them in the paging
18 opportunity;

19 d. hiring salespeople to market the paging
20 opportunity to potential and existing clients of Defendants; and

21 e. establishing pricing for the paging
22 applications based upon information TODD had gathered from
23 competitors of Defendants.

24 23. At the conclusion of the April 27, 1989 meeting,
25 PARKS on behalf of Defendants drafted a written agreement between
26 Defendants and TODD setting forth the compensation that TODD was
27 to receive for his efforts in the paging opportunity. A copy of
28 that agreement is attached hereto as Exhibit "A".

24. Beginning on April 28, 1989, the day after the meeting between TODD and PARKS, TODD began undertaking the activities on Defendants' behalf which had previously been agreed upon by him and Defendants. Specifically:

a. TODD did engage in conversations directed towards interviewing and hiring FCC counsel to assist in filing the paging applications;

b. TODD did contact various newsletter writers in order to market the paging opportunity to clients and potential clients;

c. TODD did begin drafting a mailing to be sent to all existing clients of Defendants in order to interest them in the paging opportunity;

d. TODD did begin talking to salespeople to hire to market the paging opportunity to potential and existing clients of Defendants; and

e. TODD did talk to engineers about the specifics of preparing the paging application.

25. On or about April 29, 1989, TODD, as Chief Operating Officer of RE and/or REI and pursuant to his duties under the April 27 Agreement, sent a mailing on behalf of Defendants to all of the previous clients of Defendants alerting them of the paging opportunity and requesting them to participate in the paging opportunity. (A copy of that letter is attached hereto as Exhibit "B".)

26. On or about May 1, 1989, BREEN returned from his vacation out of the Country and affirmed the written agreement between Defendants and TODD by affixing his signature to Exhibit

1 "A".

2 27. On or about May 3, 1989, TODD, as Chief Operating
3 Officer of RE and/or REI and pursuant to his duties under the
4 April 27 Agreement, sent a second mailing on behalf of Defendants
5 to all individuals who had requested information from Defendants
6 on the paging opportunity. TODD is informed and believes that
7 this letter continued to be sent out to individuals after the May
8 3, 1989 date. (A copy of that letter is attached hereto as
9 Exhibit "C".)

10 28. On, or about May 5, 1989, TODD, as Chief Operating
11 Officer of RE and/or REI and pursuant to his agreement with
12 Defendants, sent a third mailing to clients of Defendants and
13 individuals who had expressed an interest in participating in the
14 paging opportunity. (A copy of that mailing is attached hereto
15 as Exhibit "D".)

16 29. Between April 28, 1989 and May 16, 1989, TODD
17 performed those duties required of him to be performed under the
18 written and oral agreement entered into between TODD and
19 Defendants, specifically:

20 a. TODD organized the initial marketing of the
21 paging opportunity for Defendants;

22 b. TODD handled many of the incoming sales calls
23 for Defendants;

24 c. TODD supervised the sales department in the
25 solicitation of clients for the paging opportunity;

26 d. TODD participated in the process of locating
27 FCC counsel to represent Defendants; and

28 e. TODD established initial operating procedures

1 for Defendants' staff.

2 30. TODD is informed and believes and thereupon
3 alleges that at the conclusion of the paging opportunity,
4 Defendants had sold \$2,711,580.00 worth of applications to
5 individuals who had not previously been clients of Defendants and
6 \$1,450,000.00 worth of applications to individuals who had
7 previously been clients of Defendants for a total of
8 \$4,161,580.00 in paging applications sold by Defendants as a
9 result of TODD's efforts.

10 31. On or about June 6, 1989, TODD was presented with
11 a check in the amount of \$20,980.00 which he was told by
12 Defendants represented his commission for those clients to whom
13 he had personally sold paging applications. Subsequently, an
14 additional check in the amount of \$1,450.00 was presented to TODD
15 on June 7, 1989 representing what Defendants said was the
16 remaining portion of the amounts owing to TODD. A copy of those
17 two checks is attached hereto as Exhibit "E". TODD was never
18 told that these checks represented his payment under the April
19 27, 1988 agreement, nor did he ever believe that such was the
20 case.

21 32. TODD is informed and believes and thereupon
22 alleges that other individuals associated with the paging
23 opportunity had compensation arrangements similar to that
24 arrangement made by Defendants with TODD. TODD is further
25 informed and believes and thereupon alleges that any money paid
26 to those individuals under their compensation agreement was paid
27 at some time on or before July 1, 1989.

28 33. REC, RC and REI were at all times herein mentioned

1 the alter-ego of BREEN and there exists and at all times herein
2 mentioned has existed, a unity of interest and ownership between
3 such Defendants such that any separateness has ceased to exist in
4 that BREEN used assets of REC, RC and REI for his personal uses,
5 or the uses of other entities owned by him, has caused assets of
6 those entities to be transferred to him or other entities
7 controlled by him without adequate consideration and withdrew
8 funds from those entities' bank accounts for his personal use or
9 the use of other entities controlled by him.

10 34. REC, RC and REI were at all times herein mentioned
11 controlled, dominated, and operated BREEN as his individual
12 business and alter-ego in that the activities and business of
13 those entities were carried out without the holding of directors
14 or shareholders meetings, without records or minutes of any
15 corporate proceedings and BREEN entered into personal
16 transactions with those entities without the approval of the
17 directors or shareholders.

18 **FIRST CAUSE OF ACTION**
19 **(Breach of Oral Contract)**
20 **(Against RE, REC, RC, REI, BREEN)**

21 35. TODD incorporates by this reference paragraphs 1
22 through 34 of this Complaint as though set forth in full herein.

23 36. On April 27, 1989, TODD and Defendants, through
24 their agent, PARKS, orally agreed that TODD would be entitled to
25 consideration in the amount of ten percent (10%) of non-
26 previously existing clients of Defendants who purchased paging
27 applications and one percent (1%) of all individuals who
28 purchased paging applications from Defendants.

37. On or about July 1, 1989, Defendants breached this